

STATE OF NEW YORK
DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
	:	
of	:	
	:	
FOLLIN AUTO SALES, INC.	:	DETERMINATION
	:	
for Revision of a Determination or for Refund	:	
of Sales and Use Taxes under Articles 28 and	:	
29 of the Tax Law for the Period June 1, 1982	:	
through February 28, 1985.	:	

Petitioner, Follin Auto Sales, Inc., 4741 White Plains Road, Bronx, New York 10470, filed a petition for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period June 1, 1982 through February 28, 1985 (File Nos. 64449 and 65892).

On June 8, 1987, petitioner, through its duly authorized representative, waived a hearing in the Division of Tax Appeals and agreed to submit the case for determination based on the Division of Taxation file. After due consideration of the record, Daniel J. Ranalli, Administrative Law Judge, hereby renders the following determination.

ISSUE

Whether the Audit Division properly determined additional sales taxes due from petitioner based on an examination of its books and records.

FINDINGS OF FACT

1. Petitioner, Follin Auto Sales, Inc. operated a used car business located at 4741 White Plains Road, Bronx, New York.
2. On September 20, 1985, as the result of an audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Follin Auto Sales, Inc. for the period June 1, 1982 through August 31, 1982 asserting taxes due of \$2,062.08, plus interest of \$724.82, for a total of \$2,786.90. On December 20, 1985, a second notice was issued covering the period September 1, 1982 through February 28, 1985 for taxes due of \$20,642.10,

plus interest of \$3,953.67.

3. On audit, gross sales recorded in the general ledger were reconciled with sales tax returns and Federal income tax returns. Reported nontaxable sales were analyzed for the audit period and found to be correct. A reconciliation of gross sales with bank deposits disclosed that bank deposits exceeded sales by \$276,859.00. Petitioner was unable to substantiate the source of the excess bank deposits and therefore the Audit Division considered such deposits as additional taxable sales with tax due thereon of \$22,704.18.

4. At a pre-hearing conference, petitioner substantiated that \$3,500.00 in bank deposits were from loans rather than receipts from sales. As a result, the Audit Division agreed to reduce the additional tax due to \$22,415.43. By memorandum dated June 9, 1987, counsel for the Audit Division conceded that the deficiency should be further reduced to \$17,055.06 to account for sales tax collected and deposited to petitioner's bank account.

5. Petitioner submitted no further evidence to establish that the excess deposits were other than receipts from unreported sales.

CONCLUSIONS OF LAW

A. That former section 1132(c) of the Tax Law specifically provides that "it shall be presumed that all receipts for property... are subject to tax until the contrary is established, and the burden of proving that any receipt... is not taxable hereunder shall be upon the person required to collect tax or the customer. Unless (1) a vendor shall have taken from the purchaser a certificate in such form as the tax commission may prescribe, signed by the purchaser and setting forth his name and address and the number of his registration certificate... to the effect that the property or service was purchased for resale..., the sale shall be deemed a taxable sale at retail."

B. That the Audit Division determined petitioner's sales in accordance with the provisions of section 1138(a) of the Tax Law and petitioner failed to sustain its burden of showing that the receipts were nontaxable as required by section 1132(c) of the Tax Law.

C. That the petition of Follin Auto Sales, Inc. is denied and the notices of determination and demand for payment of sales and use taxes due issued September 20, 1985 and December 20, 1985 are sustained.

DATED: Albany, New York
September 18, 1987

ADMINISTRATIVE LAW JUDGE